



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Emerson Electric Company/Industrial
Controls Division

File:

B-222611

Date:

August 1, 1986

DIGEST

Protest that agency requirement for mirror image construction of uninterruptible power supply unit unduly restricts competition is denied where agency establishes that mirror image construction is necessary because of space limitations in existing facilities and protester has not shown that agency justification is clearly unreasonable.

DECISION

Emerson Electric Company, Industrial Controls Division (Emerson) protests the specifications in invitation for bids (IFB) No. DACA31-86-B-0019 issued by the Department of the Army for the procurement of an uninterruptible power supply system. Emerson contends that the IFB's requirement for mirror image module construction unduly restricts competition.

We deny the protest.

The IFB was issued on February 18, 1986. Item No. 0001 solicited a 400kw uninterruptible power supply (UPS) module complete with rectifier/charger, inverter, static bypass switch and manual bypass switch. The operation of the UPS module requires both an AC power source and a DC power source and both AC and DC electrical cables are installed through the top of the UPS. The AC and DC power sources are located at alternate ends of the room in which the equipment is to be installed and the IFB required that construction of the UPS module specified in Item No. 0001 be left to right. Item No. 0002 is for a 400kw redundant UPS module. Construction of this module is to be right to left, thereby providing a mirror image of the UPS module solicited in Item No. 0001.

By letter dated March 10, Emerson protested the IFB's mirror image requirement as well as four other specification requirements. On May 13, the Army issued a decision which denied Emerson's protest. Concerning the mirror image requirement, the Army indicated that mirror image construction was required to prevent dangerous cable crossovers at the rear of the modules. Although the Army also rejected three of Emerson's remaining four objections, Emerson's protest to our Office concerns only the mirror image construction requirement.

036264

The Army states that its decision unduly emphasized the potential electrical danger when it should have stressed the limited space available for the equipment and the changes that would have to be made to the room where the two UPS modules are to be installed if mirror image construction was not required. The Army indicates that, without mirror image construction, four additional cable tray sections would have to be installed in the area above the UPS modules and running the length of the modules. The Army points out that there are already two 8-inch pipes in this area, including the main fire protection pipe, plus a 1200A bus duct, all of which limit the available space. The Army contends that to accommodate the additional cable tray sections which would otherwise be required, the existing pipes and bus duct would have to be relocated and that this is not feasible. Under these circumstances, the Army argues that mirror image construction is a reasonable and necessary requirement. Moreover, the Army contends that mirror image construction is not proprietary to a single manufacturer and that two companies have already indicated that they have the capability of manufacturing a mirror image UPS module.

Emerson does not dispute the Army's assertion that additional electrical cabling would be necessary if mirror image construction of the redundant UPS module were not required. Emerson argues, however, that the additional cabling can be safely installed and that it believes sufficient room is present to permit installation despite the existing facilities. Emerson indicates that its UPS modules are 6 feet, 6 inches tall and since the ceiling height in the room is approximately 30 feet, it would appear that ample room exists for installing the additional cable. Emerson asserts that the Army's arguments are exaggerated and do not justify the imposition of the restriction.

In addition, although Emerson acknowledges that probably all UPS image manufacturers are capable of producing a mirror image UPS module, Emerson contends that only one firm currently manufactures a production type mirror image UPS module. Emerson argues that a regular manufacturer would have a prohibitive cost advantage which would preclude competitive bids from any other firms. Emerson contends that the requirement is not essential to the Army's needs, will result in additional cost to the government and therefore should be eliminated.

Where, as here, a protester challenges a specification as unduly restrictive of competition, the procuring agency must establish prima facie support for its position that the restriction it imposes is reasonably related to its needs. Libby Corp. et al., B-220392 et al., Mar. 7, 1986, 86-1 CPD ¶ 227. This requirement reflects the agency's obligation to create specifications that permit full and open competition consistent with the agency's actual needs. 10 U.S.C. § 2305(a)(1) (Supp. III 1985). However, contracting officials are familiar with the conditions under which the goods or services are to be used and are in the best position to know the government's actual needs.

Therefore, if the agency provides the necessary support for the specification, the burden then shifts back to the protester to show that the specification is clearly unreasonable. Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179.

In our view, the Army's determination that there is only a limited amount of space available above the UPS module establishes prima facie support for the mirror image construction requirement. Although Emerson disagrees and argues that ample space is available, the protester has not demonstrated that the agency's findings are unreasonable. In this regard, we note that while the Army does acknowledge that the ceilings in the UPS room are approximately 30 feet high, the IFB drawing of the room indicates a maximum available height of only 7 feet, 6 inches in the area where the UPS modules are to be located. We find no basis to question the Army's determination that the UPS modules must fit within this area and Emerson has not argued that it could install its UPS modules and the additional cable trays required within this height restriction. Accordingly, since substantial modification to the UPS room would be required without mirror image construction, we find that the Army has presented a reasonable basis for imposing the requirement.

Furthermore, with respect to Emerson's assertion that the requirement for mirror image construction favors one firm, we have held that even if only one company can meet the specification requirements, that, in and of itself, is not improper where the agency establishes that the specification is reasonably related to its minimum needs. Libby Corp et al., supra. Moreover, we note that Emerson is not even arguing that it cannot comply with this requirement, but rather, that one firm has a competitive advantage. The Army is not required to equalize competition to compensate for the advantage obtained by an offeror as a result of its particular circumstances and since Emerson has not shown the requirement to be unreasonable, we find no basis to object to the specification. See Information Ventures, Inc., B-221287, Mar. 10, 1986, 86-1 CPD ¶ 234.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel